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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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James H. Salter
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Seventh Floor
12400 Wilshire Boulevard
Los Angeles, CA 90025-1026

EXAMINER	
HUYNH, SON P	

ART UNIT	PAPER NUMBER
2623	

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/895,744	CRINON ET AL.	
	Examiner	Art Unit	
	Son P. Huynh	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *03* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 October 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9,11-17,19,20 and 22-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9,11-17,19,20 and 22-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *29 June 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 10/17/2005 have been fully considered but they are not persuasive.

Applicant argues Russo does not teach or suggest selecting, substantially automatically, multimedia content based on predetermined criteria set by a provider and the receiving (page 12, paragraphs 2).

In response, this argument respectfully traversed. As admitted by Applicant that Russo refers to the automatic selection of the program materials to be recorded, such selection is based strictly on viewer preferences and requires input and direction from the subscribers (page 12, paragraph 2, lines 7-9). Furthermore, Russo discloses automatically recording of one or more selections based not upon exact selection, but upon viewer preferences from which a desired program might be implied. Thus, various criteria may be used in order for a movie to be stored for subsequent replay. The user may select broader categories from which movies may be automatically downloaded, based upon particularly viewing preference. Furthermore, option is to enable the program provider to make a decision concerning the downloading of at least certain of the programs to be stored at the subscriber's site (see including, but is not limited to, col. 9, line 50-col. 10, line 10). Thus, the claimed feature "selecting, substantially

automatically, multimedia content to be broadcast to the consumer based on predetermine criteria set by a provider and the receiving" is broadly interpreted as content provider automatically selects multimedia content (e.g. movies) to be broadcast/downloaded to the subscribers partially based on particularly viewing preference received from subscriber, wherein "the receiving" as claimed is interpreted as viewing references received from the subscribers.

Applicant argues Russo teaches that the selected program material is decided by the consumer, based on viewer preference, or direct selection by the user. However, the Russo selection, although may seem automatic, is not the selection substantially automatically as claimed in claim 8 because Russo requires user input, whether it is decided by the consumer, based on viewer preference, or direct selection by the user. In contrast to Russo, Claim 8 claims the selecting is based on predetermined criteria set by a provider and on information obtained from at least one of a consumer and a storage device (page 12, paragraph 4, page 13, paragraph 2, page 14, paragraphs 1, 5).

In response, the examiner agrees with applicant argument that the program is selected based on viewer preference. However, Russo discloses that the content provider automatically selects the program/movies to broadcast/download to storage of subscribers partially based on viewing preference received from the subscribers (see including, but is not limited to, col. 9, line 53-col. 10, line 10). Even though the

subscriber provides viewing preference to content provider, however, the received viewing preference is partially **used** by the content provider for automatically downloading/broadcasting program content. Therefore, Russo discloses selecting substantially automatically, multimedia content (programs/movies) to be broadcast/downloaded to a consumer (subscriber), based on predetermined criteria set by a provider (e.g. predetermined movies set by content provider based on viewing preference) and on information obtained from at least one of a consumer (e.g. viewing preference received from subscriber) and a storage area (e.g. storage block of storage unit 14).

Applicant further argues Russo does not teach or suggest managing the multimedia content stored in the storage area, wherein managing is based on whether the consumer elects a self management or an auto management scheme provided by a provider as amended (page 13, paragraph 4).

In response, this argument is respectfully traversed. Russo discloses content provider download/broadcast program content to storage at the subscriber site (see including, but is not limited to, col. 9, line 55-col. 10, line 10, lines 25-48). Russo further discloses the subscriber also choose to erase particular programs when the subscriber no longer desires to keep them in a library (see including, but is not limited to, col. 4, line 50-col. 5, line 10). Thus, Russo discloses managing (downloading/recording/ erasing) the multimedia content stored in the storage area, wherein managing is based on whether the consumer elects a self management scheme (e.g. user selects to

add/erase particular program/content in the storage unit) or an auto management scheme provided by a provider (e.g. content provider select a program to be downloaded/recorded into the storage unit).

For reasons given above, rejection on claims 1-9, 11-17, 19-20, 22-29 as amended are analyzed as discussed below.

Claims 10, 18 and 21 have been canceled.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-9, 11-12, 15-17, 19-20, 22-29 are rejected under 35 U.S.C. 102(b) as being by Russo (US 5,619,247).

Regarding claim 1, the claimed "method" is met as follows:
"receiving information obtained from at least one of a consumer and a storage area" is met by the inherent reception of viewer preferences at the subscriber and storage area of storage unit col. 4, lines 10-67; col. 9, line 55-col. 10, line 10); and

"selecting, substantially automatically, multimedia- content to be broadcast to the consumer based on predetermined criteria set by a provider and the receiving" is met by selecting, substantially automatically, program content such as movies to be broadcast/downloaded to the subscriber based on predetermined criteria (e.g. particular category such as movies) set by content provider based on viewer preferences (see including, but is not limited to, col. 9, line 49-col. 10, line 10).

Regarding claim 2, Russo discloses a method as discussed in claim 1. Russo further discloses the multimedia content is made contemporaneous with the information obtained from at least one of the consumer and the storage area" is met by the program content (e.g. movie) is provided to subscriber based on viewer direct choices/viewer preferences and storage area of storage unit (see including, but are not limited to, col. 3, lines 3-28; col. 4, lines 10-67; col. 9, line 55-col. 10, line 38).

Regarding claim 3, Russo discloses a method as discussed in the rejection of claim 1. Russo further discloses the multimedia content is at least one of video, audio, and data (e.g. movies – col. 9, lines 55-67).

Regarding claim 4, Russo discloses a method as discussed in the rejection of claim 1. Russo further discloses scheduling the multimedia-content to be broadcast to the consumer based on said selecting (scheduling of the transmission of the video or audio

content based upon viewer or listener preference and/or the direct selection by the user (col. 7, lines 12-23; col. 9, line 45-col. 10, line 10).

Regarding claim 5, Russo discloses a method as discussed in the rejection of claim 4. Russo further discloses the scheduling is based on criteria (automatic downloading takes place based on criteria (e.g., downloading/broadcasting/recording a particular movie, erasing a particular program, number of times the program played, etc.) on viewing preferences or program provider decisions (col. 4, line 45-col. 5, line 65, col. 9, line 45-col. 10, line 10).

Regarding claim 6, Russo discloses a method as discussed in the rejection of claim 5. Russo further discloses the criteria includes consideration of at least one of: whether the multimedia-content has been consumed yet; how many times the multimedia-content has been consumed, whether the multimedia-content has been deleted or tagged for deletion; if the multimedia-content is still in the storage area; whether the multimedia-content is intended to be saved/archived, and whether the storage area is categorized" (whether or not programs have been deleted, or number of times the viewer is allowed to viewed the program, etc. col. 4, line 45-col. 5, line 65).

Regarding claim 7, Russo discloses a method as discussed in the rejection of claim 1. Russo further discloses the receiving is accomplished with at least one of: a telephone, a dial-up modem, a cable television vision communication, a network, the Internet, and

a wireless communication (the communications link 12, which could be a telecommunications link over a standard telephone line, cable (col. 3, lines 59-63; col. 9, lines 11-23).

Regarding claim 8, the limitations of a computer readable medium as claimed correspond to the limitations of the method as claimed in claims 1 and 2. Russo further discloses all functions (i.e. recording/downloading, erasing, etc.) are performed automatically (col. 4, line 28-col. 5, line 45; col. 7, lines 23-60; col. 9, line 40-col. 10, line 10). Inherently, executable program instructions are comprised in computer readable medium to perform the functions automatically. Therefore, claim 8 is rejected as analyzed in the rejection of claim 1.

Regarding claim 9, the additional limitations as claimed correspond to the additional limitations as claimed in claim 4, and are analyzed as discussed with respect to the rejection of claim 4.

Regarding claim 11, the limitations that correspond to the limitations of claim 1 are analyzed as discussed in the rejection of claim 1, wherein the feature "receiving a selection of multimedia content" is met by receiving selection of multimedia content either from subscriber or content provider (see including, but is not limited to, col. 9, line 55-col. 10, line 10).

Regarding claims 12, 15, the additional limitations as claimed correspond to the additional limitations as claimed in claims 2-3, and are analyzed as discussed with respect to the rejection of claims 2-3.

Regarding claim 16, Russo discloses a method comprising:

transferring multimedia content to a storage area,

accessible to a consumer's television system (transferring/downloading multimedia content such as movies to a storage unit, accessible to a viewer's digital television system so that the user select a program to view – col. 7, line 24-col. 8, line 41; col. 9, line 55-col. 10, line 49);

Russo further discloses the subscriber also choose to erase particular programs when the subscriber no longer desires to keep them in a library (see including, but is not limited to, col. 4, line 50-col. 5, line 10). Thus, Russo discloses managing (downloading/recording/ erasing) the multimedia content stored in the storage area, wherein managing is based on whether the consumer elects a self management scheme (e.g. user selects to add/erase particular program/content in the storage unit) or an auto management scheme provided by a provider (e.g. content provider select a program to be downloaded/recorded into the storage unit).

Regarding claim 17, the additional limitations as claimed correspond to the additional limitations as claimed in claim 3, and are analyzed as discussed with respect to the rejection of claim 3.

Regarding claim 19, the additional limitations as claimed correspond to the additional limitations as claimed in claim 6, and are analyzed as discussed with respect to the rejection of claim 6. Russo discloses the system automatically keep track of where viewing left off, and restart from that point until such program has been viewed substantially in its entirely; payment may be transferred or earmarked to the provider once a program is selected for viewing, but if viewing were to be terminated shortly thereafter and never resume, the system might automatically re-credit the subscriber for that program. Such scheme is in keeping with allowing a viewer to enjoy a free "preview" 0 of a program. A viewer may be allowed to view a selected program as many times as desired over a particular, predetermined period of time without incurring any additional charge (col. 5, lines 10-65). Thus, the method inherently comprises the auto management scheme is a set of predetermined rules (i.e. automatically charge, re-credit, set number of times that the viewer allow to watch in predetermined period, set of deletion, etc.).

Regarding claims 20 and 22, the limitations of the computer readable medium that correspond to the limitations of the method as claimed in claims 16 and 22 are analyzed as discussed with respect to the rejection of claims 16 and 22.

Regarding claim 23, the limitations of an apparatus as claimed correspond to the limitations of the method as claimed in claim 11, and are analyzed as discussed with

respect to the rejection of claim 11. Russo further discloses the receiver receives digital signal (col. 7, line 24-col. 8, line 40, and figures 1-2). Thus, the receiver is digital receiver.

Regarding claims 24-25, the additional limitations of the apparatus as claimed correspond to the additional limitations of the method as claimed in claims 12, 15, and are analyzed as discussed with respect to the rejections of claims 12 and 15.

Regarding claim 26, the limitations of the apparatus as claimed correspond to the limitations of the method as claimed in claim 11, and are analyzed as discussed with respect to the rejection of claim 11, wherein multimedia selector to select multimedia-content is met by selector for selecting program materials to be downloaded/recorded or playback (see including, but are not limited to, col. 3, lines 5-28 ; col. 4, lines 1-44 ; col. 9, line 38-col. 10, line 10).

Regarding claim 27, Russo further discloses scheduling of the transmission of the video or audio content based upon viewer or listener preference and/or the direct selection by the user so that the selected program material is automatically and inattentively recorded/downloaded (see including, but are not limited to, col. 4, lines 55-64; col. 7, lines 12-23; col. 9, line 48-col. 10, line 10). Thus, apparatus inherently comprises multimedia content scheduler, configured to communicate with said multimedia-content

selector, to schedule the multimedia-content to be broadcast to the consumer so that the program is automatically and inattentively broadcast/downloaded to the consumer.

Regarding claim 28, the claimed "apparatus of claim 26, further comprising: a processor configured to receive the information and execute instructions that select the multimedia-content to be broadcast to the consumer', and a storage area configured to allow communication with said processor" is met by the fact that the system is a VOD pay-per-play system, which inherently means that the recording selections (as discussed above) are chosen from some sort of storage at the server based on user selection or preferences. Also, in an alternate embodiment, the storage device could be located at a centralized distribution facility, such as the cable provider (see including, but are not limited to, col. 3, lines 25-28; col. 4, lines 28-67; col. 9, line 40-col. 10, line 10).

Regarding claim 29, the claimed "apparatus of claim 26, further comprising'. a multimedia-content data base server, to store new multimedia-content, some of which is selected to be broadcast to the consumer", is, again met by the fact that the system is a VOD pay-per-play system, which inherently means that the recording selections (as discussed above) are chosen from some sort of storage at the server based on user selection or preferences. Also, in an alternate embodiment, the storage device could be

located at a centralized distribution facility, such as the cable provider (see including, but are not limited to, col. 3, lines 25-28; col. 4, lines 28-67; col. 9, line 40-col. 10, line 10).

Claim Rejections - 35 USC § 103

4. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russo (US 5,619,247) as applied to claim 11 above.

Regarding claim 13, the Russo reference teaches all of that which is discussed above with regards to claim 11. However, Russo is silent as to the broadcasting protocol used. Claim 13 states, "The method of claim 11, wherein said broadcasting is accomplished using opportunistic insertion of data". The OFFICIAL NOTICE is taken that it is notoriously well known in the art to use opportunistic insertion of data for broadcasting at a variable data rate for transmission of video programs over standard mediums or to reduce waste of bandwidth.
The Applicant goes as far as to admit that "the multimedia-content may be multiplexed onto existing channels and sent at a variable data rate using a technique known in the art as opportunistic insertion of data (OID)" (paragraph 0035 of initial disclosure). As per this admission that OID is known in the art, the Examiner submits that it would have been clearly obvious to one of ordinary skill in the art at the

time the invention was made to utilize OID in an attempt to transmit programming according to a common protocol and a common technique known in the art.

Regarding claim 14, the Russo reference teaches all of that which is discussed above with regards to claim 11. However, Russo is silent as to the broadcasting protocol used. Claim 14 states, "The method of claim 11, wherein said broadcasting is accomplished with a substantially dedicated channel having a fixed transmission bandwidth". OFFICIAL NOTICE is taken that it is notoriously well known in the art to use a dedicated channel having a fixed transmission bandwidth for transmission of video programs over standard mediums. Therefore, the Examiner submits that it would have been clearly obvious to one of ordinary skill in the art at the time of the invention to utilize a dedicated channel having a fixed transmission bandwidth for delivering programming in an attempt to transmit programming according to a common protocol and a common technique known in the art, such that the transmission time could be lessened and the content could be delivered more quickly using dedicated channels.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ellis et al. (US 6,898,762) discloses client server electronic program guide.

Goode (US 6,718,552) discloses network bandwidth optimization by dynamic channel allocation.

Gordon et al. (US 5,920,700) discloses system for managing the addition/deletion of media assets within a network based on usage and media asset metadata.

Hunter et al. (US 2002/0056118 A1) discloses video and music distribution system.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son P. Huynh whose telephone number is 571-272-7295. The examiner can normally be reached on 9:00 - 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

It is noted that Group Art Unit 2611 has been changed to Group Art Unit 2623

Son P. Huynh
May 25, 2006

CHRIS KELLEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600